



## UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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Ref: 8EPR-EP

Don A. Ostler, Director  
Division of Water Quality  
Utah Department of Environmental Quality  
288 North 1460 West  
P.O. Box 144870  
Salt Lake City, Utah 84114-4870

Re: Section 303(d) Total Maximum Daily  
Load (TMDL) Waterbody List

Dear Mr. Ostler:

Thank you for your submittal of Utah's 2000 Clean Water Act Section 303(d) waterbody list. EPA has conducted a complete review of this waterbody list and its supporting documentation and information. Based on this review, EPA has determined that Utah's 2000 list of water quality limited segments (WQLSs) still requiring TMDLs meets the requirements of Section 303(d) of the Clean Water Act ("CWA" or "the Act") and EPA's implementing regulations. Therefore, by this order, EPA hereby APPROVES Utah's Section 303(d) list. The statutory and regulatory requirements, and a summary of EPA's review of Utah's compliance with each requirement, are described in the enclosure.

EPA's approval of Utah's Section 303(d) list extends to all waterbodies on the list with the exception of those waters that are within Indian Country, as defined in 18 U.S.C. Section 1151. EPA is taking no action to approve or disapprove the State's list with respect to those waters at this time. EPA, or eligible Indian Tribes, as appropriate, will retain responsibilities under Section 303(d) for those waters.

The public participation process sponsored by Utah was extensive. In addition to providing public notice of the waterbody list, the State formed technical advisory and steering committees which included Federal and State agencies and individuals and groups from the private sector to assist in development of the §303(d) list. State employees made presentations to various groups concerning the TMDL process and made copies of the draft 303(d) list available to participants in these meetings. Notice of the proposed list of 303(d) waters was published in the major newspapers and posted on the Division of Water Quality's website.

The State of Utah has continued to provide a quality assessment of its waters. We appreciate the time and care your staff has taken in developing the §303(d) list of waters. In particular, we are especially thankful for the hard work from the members of your staff to put



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together a well organized and thorough document. We wish to continue our support in your efforts to develop TMDLs for the waters identified on the list.

Again, thank you for the efforts related to the excellent job of developing the §303(d) TMDL waterbody list for the 2000-2002 biennium. If you have questions on any of the above information, feel free to give me or Kathryn Hernandez (303/312-6101) of my staff a call.

Sincerely,

Max H. Dodson,  
Assistant Regional Administrator  
Office of Ecosystems Protection and  
Remediation

Enclosure

## **Review of Utah's 2000 Section 303(d) Waterbody List**

*Attachment to the November 21, 2000 letter from Max H. Dodson, Assistant Regional Administrator,  
Office of Ecosystems Protection and Remediation, US EPA, Region VIII to Don A. Ostler, Director  
Division of Water Quality, Utah Department of Environmental Quality*

Date of Transmittal Letter from State: September 28, 2000  
Date of Receipt by EPA: October 2, 2000

### Purpose

The purpose of this review document is to describe the rationale for EPA's approval of Utah's 1998 Section 303(d) waterbody list. The following sections identify those key elements to be included in the list submittal based on the Clean Water Act and EPA regulations. See 40 C.F.R. 130.7. EPA reviewed the methodology used by the State in developing the §303(d) list and the State's description of the data and information it considered. EPA's review of Utah's §303(d) list is based on EPA's analysis of whether the State reasonably considered existing and readily available water quality-related data and information and reasonably identified waters required to be listed.

### Statutory and Regulatory Background

Section 303(d)(1) of the Act directs States to identify those waters within its jurisdiction for which effluent limitations required by Section 301(b)(1)(A) and (B) are not stringent enough to implement any applicable water quality standard, and to establish a priority ranking for such waters, taking into account the severity of the pollution and the uses to be made of such waters. The Section 303(d) listing requirement applies to waters impaired by point and/or nonpoint sources, pursuant to EPA's long-standing interpretation of Section 303(d).

EPA regulations provide that States do not need to list waters where the following controls are adequate to implement applicable standards: (1) technology-based effluent limitations required by the Act, (2) more stringent effluent limitations required by State or local authority, and (3) other pollution control requirements required by State, local, or federal authority. See 40 C.F.R. 130.7(b)(1).

In developing Section 303(d) lists, States are required to assemble and evaluate all existing and readily available water quality-related data and information, including, at a minimum, consideration of existing and readily available data and information about the following categories of waters: (1) waters identified as partially meeting or not meeting designated uses, or as threatened, in the State's most recent Section 305(b) report; (2) waters for which dilution calculations or predictive modeling indicate nonattainment of applicable standards; (3) waters for which water quality problems have been reported by governmental agencies, members of the public, or academic institutions; and (4) waters identified as impaired or threatened in any Section 319 nonpoint assessment submitted to EPA. See 40 C.F.R.

130.7(b)(5). In addition to these minimum categories, States are required to consider any other data and information that is existing and readily available. EPA's 1991 Guidance for Water Quality-Based Decisions describes categories of water quality-related data and information that may be existing and readily available. See Guidance for Water Quality-Based Decisions: The TMDL Process, EPA Office of Water, 1991, Appendix C ("EPA's 1991 Guidance"). While States are required to evaluate all existing and readily available water quality-related data and information, States may decide to rely or not rely on particular data or information in determining whether to list particular waters.

In addition to requiring States to assemble and evaluate all existing and readily available water quality-related data and information, EPA regulations at 40 C.F.R. 130.7(b)(6) require States to include as part of their submissions to EPA documentation to support decisions to rely or not rely on particular data and information and decisions to list or not list waters. Such documentation needs to include, at a minimum, the following information: (1) a description of the methodology used to develop the list; (2) a description of the data and information used to identify waters; and (3) any other reasonable information requested by the Region.

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#### Review of Utah's Submission

##### *A. Description of the methodology used to develop the list. (§130.7(b)(6)(i))*

The Utah 2000 Section 303(d) waterbody list submittal included the following items:

- The methodology used to develop the §303(d) list
- The data and information used to prepare the 303(d) list
- Documents relating to the public participation in the development of the 303(d) list
- The prioritization of TMDL waterbodies
- The proposed schedule for completion of TMDLs
- An identification of waterbodies on the 2000 list (Tables 6-a, 6-b, 6-c, 6-d)
- Waters on Utah's 1998 303(d) list that are not included on the 2000 list (Tables 7-a, 7-b, 7-c)
- The status of the waterbodies targeted for TMDL analyses during the 1998-2000 biennium (Table-8)

EPA considered these items as well as the documents listed below in section G. in reviewing Utah's §303(d) list.

The methodology used by Utah to determine the status of beneficial use support (including drinking water use, recreational use, aquatic life use, and agricultural use) is reviewed in the "Criteria for Listing Waterbodies on the §303(d) List." section of the State submittal (Tables 1-4). In addition, the criteria used to evaluate use support in lakes and reservoirs is provided in this part of the State submittal.

Utah properly listed waters with nonpoint sources causing or expected to cause impairment, consistent with Section 303(d) and EPA guidance. Section 303(d) lists are to include all WQLSs still needing TMDLs, regardless of whether the source of the impairment is a point and/or nonpoint source. EPA's long-standing interpretation is that Section 303(d) applies to waters impacted by point and/or nonpoint sources. This interpretation has been described in EPA guidance, most recently in a 1997 memorandum clarifying certain requirements for 1998 Section 303(d) lists. See EPA's April 1991 Guidance and the August 27, 1997 EPA guidance listed below. In addition, this interpretation of Section 303(d) is described in detail in a May 23, 1997, memorandum from Geoffrey Grubbs, Director of the Assessment and Watershed Protection Division, EPA Office of Water, to the FACA Workgroup on Section 303(d) Listing Criteria<sup>1</sup>. See Memorandum from Geoffrey H. Grubbs, Director, Assessment and Watershed Protection Division, to FACA Workgroup on Section 303(d) Listing Criteria, "Nonpoint Sources and Section 303(d) Listing Requirements", May 23, 1997. See also Memorandum from Robert Perciasepe, Assistant Administrator, Office of Water, to Regional Administrators and Regional Water Division Directors, "New Policies for Establishing and Implementing TMDLs," August 8, 1997.

EPA has concluded that the methodology Utah used to develop the list is reasonable and consistent with national §303(d) regulations and guidelines. Utah's methodology is reasonable because it is built, in large part, on guidance supplied by EPA to identify use impairments in surface waters. See September, 1997 guidance from Office of Water, Headquarters, US EPA regarding Guidelines for Preparation of the Comprehensive State Water Quality Assessments (305(b) Reports) and Electronic Updates: Supplement, EPA-841-B-97-002B.

*B. Description of the data and information used to identify waters, including a description of the data and information used by the state as required by section 130.7(b)(5). (§130.7(b)(6)(ii))*

The State relied primarily on a collection of chemical, physical, and biological data collected by Utah DEQ as well as data collected through cooperative agreements with the US Forest Service, the US Bureau of Land Management, the US Park Service, Salt Lake County, and Central Utah Water Conservancy District. All data was considered in development of the list.

EPA has reviewed Utah's description of the data and information it considered for identifying waters on the §303(d) list. EPA concludes that the State properly assembled and evaluated all existing and readily available data and information, including data and information relating to the categories of waters specified in 40 C.F.R. 130.7(b)(5).

*. Waters identified by the State in its most recent section 305(b) report as "partially meeting" or "not meeting" designated uses or as "threatened" (§130.7(b)(5)(i))*

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<sup>1</sup> EPA convened a Federal Advisory Committee Act (FACA) Committee in November 1996. The report of this FACA committee is found in EPA document EPA 100-R-98-006 (July 1998).

The State has attempted to achieve full consistency between its §305(b) report assessments and the §303(d) list. All waters identified in the Utah Section 305(b) report as "not supporting" and "partially supporting" for one or more use are included in the §303(d) waterbody list, unless all the relevant TMDLs were completed and approved by EPA for the waterbody. There were no waters identified as "threatened" based on EPA's definition as given in the 1998 list guidance (see August 27, 1997 reference below).

It should be noted that the State uses a rotating-basin approach for its assessment of waters. This means that a detailed assessment is reported for a subset of the entire State every two years in the 305(b) report. Because of this, both the 1998 305(b) report as well as the year 2000 305(b) report were used to compare 305(b) assessments with the 303(d) waterbody list.

*. Waters for which dilution calculations or predictive models indicate nonattainment of applicable water quality standards (§130.7(b)(5)(ii))*

All waters for which NPDES discharge permits are expiring between April 1, 2000 and March 31, 2002 and are expected to require an updated TMDL in conjunction with a re-permitting action are on the 2000 §303(d) list. See Table 6-c in Utah's year 2000 list. The likelihood that these waters will need an updated TMDL is very high; thus Utah chose to include them on the §303(d) list of waters in need of (new or updated) TMDLs. The listing of these waters is supported primarily by the past and anticipated results of dilution calculations and predictive modeling.

*. Waters for which water quality problems have been reported by local, state, or federal agencies; members of the public; or academic institutions (§130.7(b)(5)(iii))*

The State considered water quality problems reported by other entities in development of its §303(d) list. This information was received through various means including formal technical reports submitted to Utah DEQ, water quality data generated by other governmental agencies, as well as data and information from local technical watershed advisory committees. Information came to the Utah DEQ from all levels of government and the public.

*. Waters identified by the State as impaired or threatened in a nonpoint assessment submitted to EPA under section 319 of the CWA or in any updates of the assessment (§130.7(b)(5)(iv))*

Utah has generally achieved consistency between its nonpoint source assessments and its §303(d) waterbody list. There are 12 waterbodies that were delisted in the State's year 2000 1998 list that were initially put on earlier 303(d) lists based on the 1988 nonpoint source assessment performed by the State. Since 1988, the State has updated its methodology to identify impaired waters. This methodology is now used universally by UT DEQ in assessing the waters of the State. Because of this, there is good consistency between the State's year 2000 305(b) report and the year 2000 303(d) waterbody list and partial consistency between the 1988 nonpoint source assessment with the more contemporary reports. It should be noted that a strict consistency comparison between the 1988 nonpoint source assessment with the more recent

assessments is difficult because the 1988 assessment provides only a generalized characterization of waterbody impairments rather than a detailed waterbody-by-waterbody assessment as found in the contemporary assessments. For example, the 1988 nonpoint source assessment identifies the “Weber River and tributaries, from Stoddard Diversion to Headwaters” as a waterbody of concern. In contrast, the more recent 305(b) and 303(d) reports identifies which of the tributaries (e.g., Echo Creek, Silver Creek, East Canyon Creek) are impaired rather than using generalized characterizations.

*C. A rationale for any decision to not use any existing and readily available data and information for any one of the categories of waters as described in §130.7(b)(5) (§130.7(b)(6)(iii))*

For one specific waterbody (the American Fork River), the State was presented with total metals, fish tissue and macroinvertebrate data from the Uinta National Forest as a basis for listing the water. Because of the uncertainty related to the data and the difficulty in using the data to determine impairment status, the State concluded that the data was not adequate to support listing the water. We agree with the State’s analysis because of the type and age of data, the quantity of data, and because neither the State or EPA have final guidance on how to interpret some of the biological data regarding impairment status. Follow up work will be done by the State to gather additional information regarding this site and investigate the concerns raised by the Uinta National Forest. Further, the State has requested recent data as collected by the US Geological Survey for the American Fork River be sent to DEQ for consideration in developing the year 2002 303(d) waterbody list.

EPA has reviewed the State's rationale for not using these data and found such rationale reasonable and sufficient for purposes of Section 303(d) because of the explanation given above.

*D. Any other reasonable information requested by Regional Administrator. (§130.7(b)(6)(iv))*

Information requested by EPA Region VIII during its review of the State's list included 1) monitoring strategies, 2) exceedance reports for the West Colorado Watershed Management Unit assessment, including assessments for the Bear River, Jordan River/Utah Lake, Weber River, and Beaver River which were not included on the 2000 303(d) list 3) and antidegradation assessment performed on State waters. The State has provided responses to all the information requests from the Regional office during the course of the Region's review.

According to EPA regulations, each State must demonstrate good cause for not including a water or waters on the list. See 40 C.F.R. Part 130. The State identified in Tables 7-a and 7-b the waters that were taken off the 1998 list. These tables include rationales on a waterbody-by-waterbody basis for not including the waters on the 2000 list. These reasons include:

P data indicates that the waterbody is meeting water quality standards,

P a change in the methodology used to determine beneficial use support,

P the initial listing decision was based on unsupported anecdotal information or information that was not sufficient in quantity or quality to make a reliable decision regarding impairment,

P the waterbody does not exist as described, a new waterbody deliniation was used to describe the waterbody on the 303(d) list,

P an error in intrepretation of water quality standards,

P a TMDL was completed for the waterbody, and

P a change in water quality standards now supports a conclusion that the waterbody is fully supporting its use.

Further discussion of the various reasons for delisting waters is given in Part E. Criteria for Removing Waterbodies from the 303(d) List in the State's year 2000 303(d) list submittal. For almost all the waters that were delisted, the decisions to take the waters off the list were based on new data or information or on a change in the State's assessment methodology.

*E. Prioritization of waters on the list taking into account the severity of the pollution and the uses to be made of such waters; the prioritization shall specifically include the identification of waters targeted for TMDL development in the next two years (§130.7(b)(4))*

EPA regulations interpret the requirement in Section 303(d)(1)(A) of the Clean Water Act that States establish a priority ranking for listed waters. The regulations at 40 C.F.R. 130.7(b)(4) require States to prioritize waters on their Section 303(d) lists for TMDL development, and also to identify those WQLSs targeted for TMDL development over the next biennium 2000 - 2002. In prioritizing and targeting waters, States must, at a minimum, take into account the severity of the pollution and the uses to be made of such waters. See Section 303(d)(1)(A). As long as these factors are taken into account, the Act provides that States establish priorities. States may consider other factors relevant to prioritizing waters for TMDL development, including immediate programmatic needs, vulnerability of particular waters as aquatic habitats, recreational, economic, and aesthetic importance of particular waters, degree of public interest and support, and state or national policies and priorities. See 57 Fed. Reg. at 33040, 33045 (July 24, 1992), and EPA's April 1991 Guidance listed below.

In addition to identifying waters targeted for TMDL development over the next biennium, the State identified the priority of the waters with respect to its priority for TMDL development.

The factors the State took into account in prioritizing the waterbodies on its list were severity of pollution and the uses which are impaired, as well as the degree of public interest, programmatic needs, economic and social impact, on-going activities, and basin-planning cycles.



EPA reviewed the State's identification of WQLS's targeted for TMDL development in the next two years and concludes that the targeted waters are appropriate for TMDL development in this time frame. This conclusion is based, in part, on the number and type of TMDLs planned for development by the State and the past experience in developing TMDLs in the State.

EPA also concludes that the criteria used to prioritize are reasonable and within the discretion of the State under EPA guidance.

*F. Identification of the pollutants causing or expected to cause violation of the applicable water quality standards (§130.7(b)(4))*

The State identified the pollutants (when known) causing or expected to cause exceedences of the applicable water quality standards, including those pollutants that have no corresponding numeric criteria in the State standards (e.g. sediment). The State's identification of pollutants are found in each of the §303(d) tables on a segment-by-segment basis.

*G. Documents used in review of Utah's §303(d) waterbody submittal*

The following list of documents were used directly or indirectly as a basis for EPA's review of the State's §303(d) waterbody list. This list is not meant to be an exhaustive list of all records, but to provide the primary documents the Region relied upon in making its decisions to approve the State's list.

December 28, 1978 Federal Register Notice, *Total Maximum Daily Loads Under Clean Water Act*, finalizing EPA's identification of pollutants suitable for TMDL calculations, 43 Fed. Reg. 60662

January 11, 1985 Federal Register Notice, *40 C.F.R. Parts 35 and 130, Water Quality Planning and Management: Final Rule*, 50 Fed. Reg. 1774

October 1988, "State of Utah Nonpoint Source Assessment"; Department of Health, Division of Environmental Health, Bureau of Water Pollution Control.

April 1991, "Guidance for Water Quality-Based Decisions: The TMDL Process," EPA 440/4-91-001.

July 24, 1992 Federal Register Notice, *40 C.F.R. Parts 122, 123, 130*, revision of regulation, 57 Fed. Reg. 33040

August 13, 1992 memorandum from Geoffrey Grubbs, Director, Assessment and Watershed Protection Division, Office of Water, EPA Headquarters, to EPA Water Quality Branch Chiefs, Regions I - X and TMDL Coordinators, Regions I - X, regarding "Supplemental Guidance on Section 303(d) Implementation."

October 30, 1992 memorandum from Geoffrey Grubbs, Director, Assessment and Watershed Protection Division, Office of Water, EPA Headquarters, to Water Quality Branch Chiefs,

Regions I - X, regarding "Approval of 303(d) Lists, Promulgation Schedules/Procedures, Public Participation."

November 26, 1993 memorandum from Geoffrey Grubbs, Director, Assessment and Watershed Protection Division, Office of Water, EPA Headquarters, to Water Quality Branch Chiefs, Regions I - X, and TMDL Coordinators, Regions I - X, regarding "Guidance for 1994 Section 303(d) Lists."

#### 40 C.F.R. Part 130 Water Quality Planning and Management

May 23, 1997 memorandum from Geoffrey H. Grubbs, Director, Assessment and Watershed Protection Division, Headquarters, US EPA to FACA Workgroup on Section 303(d) Listing Criteria, regarding "Nonpoint Sources and Section 303(d) Listing Requirements."

July 22, 23; 1997 agenda and presentation notes from the TMDL Workshop; Region VIII States & Tribes (Denver, Colorado).

August 27, 1997 memorandum from Robert H. Wayland III, Director, Office Wetlands, Oceans, and Watershed, Office of Water, EPA Headquarters, to Water Division Directors, Regions I - X, and Directors, Great Water Body Programs, and Water Quality Branch chiefs, Regions I - X, regarding "National Clarifying Guidance For 1998 State and Territory Section 303(d) Listing Decisions."

September, 1997 guidance from Office of Water, Headquarters, US EPA regarding Guidelines for Preparation of the Comprehensive State Water Quality Assessments (305(b) Reports) and Electronic Updates: Supplement, EPA-841-B-97-002B

September 12, 1997 letter from Carol L. Campbell, Director, Ecosystems Protection Program, Office of Ecosystems Protection & Remediation, US EPA, Region VIII to Mike Reichert, Utah Department of Environmental Quality regarding "Transmittal of TMDL Guidance."

January 27, 1998 presentation notes from Bruce Zander, US EPA, Region VIII, from the Region VIII 305(b) Coordinators' Meeting entitled "Relationship Between Section 303(d) & Section 305(b)."

April 27, 2000 65 Federal Register 24641 EPA Review and Approval of State and Tribal Water Quality Standards.

April 28, 2000 memorandum from Robert H. Wayland, III (Director, Office of Wetlands, Oceans, and Watersheds) to Water Division Directors, Regions 1 - 10 entitled "EPA Review of 2000 Section 303(d) lists."

October 2, 2000 letter from Don A. Ostler, Director, Division of Water Quality, Utah Department of Environmental Quality to Max H. Dodson, Assistant Regional Administrator, US Environmental Protection Agency, Region VIII regarding "Submittal of 2000 Section 303(d) TMDL Waterbody List."